IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 18TH JANUARY 2007 / 28TH PAUSHA 1928

FAO.No. 111 of 2006()

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AGAINST THE ORDER DATED 05/11/2005 IN IA 461/05 IN AS.12/1998 OF SUB COURT, HOSDRUG

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APPELLANT/APPELLANT:

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PALAT C. AHAMMED, AGED 62 YRS,
S/O. K.USSINAR, MUSLIM, LANDHOLDER,
RESIDING AT CHALYANAYI, AJANUR VILLAGE,
P.O.KOLAVAYAL, HOSDURG TALUK.

BY ADV. SRI.T.K.VIPINDAS

RESPONDENT: RESPONDENT

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A.P.SAFIA, AGED 36 YRS,
W/O. ABDULLA @ ABDULKHADER, MUSLIM,
LANDHOLDER, RESIDING IN AJNUR VILLAGE,
HOSDURG TALUK, P.O.KOLAVAYAL.

BY ADV. SRI.V.RAJENDRAN

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 18/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**K.T.SANKARAN, J**

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F.A.O. No. 111 of 2006

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Dated this the 18th day of January, 2007

**JUDGMENT**

The appellant challenges the order in I.A.No.461/05 in A.S.No.12/98, Sub Court, Hosdurg, by which the court below dismissed the application filed by the appellant under Order 41 Rule 19 of C.P.C. The appeal was posted for hearing on 14.2.2001. On that day, the appellant and the respondent were absent and the court below dismissed the appeal for default. Subsequently the appeal was readmitted. The appeal was posted for hearing on 27.6.2005. On that day, counsel for the appellant reported no instructions. The appellant was absent and the court below dismissed the appeal for default. I.A.No.461/2005 was filed by the appellant under Rule 19 of Order 41. The court below dismissed the application stating that no grounds are made out for readmitting the appeal.

2. It is stated that the appellant could not appear before court since he was laid up. The court below noticed that no medical certificate was produced and no evidence was adduced

to substantiate the contentions put forward by the appellant and to explain why he did not appear before court on the date fixed for hearing of the appeal. After having heard the counsel for the parties and taking into account the facts and circumstances of the case, I am inclined to grant an opportunity to the appellant to prosecute the appeal on the merits on condition that the appellant shall pay a sum of Rs.1,000/- as costs to the respondent within a period of one month.

In the result, the appeal is allowed. The order impugned is set aside and A.S.No.12 of 1998 is readmitted on condition that the appellant shall pay to the respondent a sum of Rs.1,000/- as costs within a period of one month. If the appellant fails to pay the costs, the order impugned shall remain in force and this FAO will be treated as dismissed. Since the appeal is of the year 1998, the court below shall dispose of the appeal on or before 31.3.2007.

**K.T.SANKARAN,**
**JUDGE**

csl

**K.T.SANKARAN, J**

M.F.A.No.1479 of 1998

JUDGMENT

11th January, 2007